Supreme Court, U. S.
FILED
SEP 7 1978
MICHAEL RODAK, JR., CLERK

No. 78-302

In the Supreme Court of the United States

OCTOBER TERM, 1978

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,
Petitioners,

v.

CLIFFORD EUGENE DAVIS, JR., ET AL.,
Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

JOHN F. WARD, JR.
1111 South Foster Drive, Suite C
Post Office Box 65236
Baton Rouge, Louisiana 70896
(504) 923-3462

ATTORNEY FOR PETITIONERS

TABLE OF CONTENTS

PAGE

Appendix A: District Court Opinion and Judgment . 1
Appendix B: Court of Appeals Decision 15
Appendix C: Court of Appeals Denial of Rehearing 25
Certificate 26

APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CLIFFORD EUGENE DAVIS, JR., A MINOR, BY HIS FATHER AND NEXT FRIEND, CLIFFORD EUGENE DAVIS, SR., ETC., ET AL

VERSUS — CIVIL ACTION

EAST BATON ROUGE PARISH SCHOOL BOARD, a Corporation, and LLOYD FUNCHESS, as Superintendent of Public Schools in East Baton Rouge Parish — NUMBER 1662

* * * * *

Robert C. Williams, Esq.
WILLIAMS & EAMES
1822 North Acadian Thruway West
Baton Rouge, Louisiana 70802

Murphy W. Bell, Esq.
Post Office Box 319
Baton Rouge, Louisiana 70821

Attorneys for Plaintiffs-Intervenors

John F. Ward, Jr., Esq.
770 North Street
Baton Rouge, Louisiana 70802

Attorney for East Baton Rouge Parish School Board

E. GORDON WEST, District Judge:

This suit, seeking to desegregate the East Baton Rouge Parish school system, was originally filed on February 29, 1956, almost 20 years ago. Over the years, many hearings have been held and many orders have

been issued by this Court in an effort to bring the operation of this school system within the requirements of the United States Constitution as it understood those requirements to be.

The East Baton Rouge Parish School Board has, in each instance, been totally cooperative and has at all times made a good faith effort to comply with the orders issued. Indeed, it has in fact always complied with the orders of this Court. Today, no student in the East Baton Rouge Parish school system is denied either the right or the opportunity to attend an integrated school. In accordance with sound educational principles, the neighborhood school system has, as much as possible, been preserved. This Court, in all of its hearings in connection with the operation of nine separate public school systems, including the East Baton Rouge Parish system, has never heard a single qualified educator state that the neighborhood concept for school attendance is not a sound educational concept. Indeed, the almost unanimous opinion of those who have testified before this Court is that if we are truly interested in the educational welfare of the children involved, the neighborhood concept, at least as far as initial assignment is concerned, should be preserved at all cost. The East Baton Rouge Parish School Board has consistently endeavored to preserve and apply this concept in assigning students to the many schools in its system. Because of purely voluntary housing patterns throughout the Parish of East Baton Rouge, this has, of course, resulted in some schools having an initial assignment of all black students and some having an initial assignment of all white students. Out of the total of 108 schools in the system, 20

are all black and 2 are all white. All other schools have racially mixed student bodies to varying degrees.

It seems to have become a custom for some lawyers to file a motion in this case each year before school starts seeking what they broadly refer to as "Supplemental Relief." It is such a motion that is presently before the Court.

After this rather vague motion was filed, conferences were held with counsel for all parties present. All aspects of the East Baton Rouge Parish school operations were discussed, and the Court tried diligently to ascertain exactly what the attorney who filed the motion was seeking. The only concrete thing that emerged from these conferences as far as the Court could determine was that there were really no "plaintiffs" involved; that the attorney was appearing as an "intervenor"; that no parents of children in the system were appearing to voice any complaints; and that the only thing sought by the attorney-intervenor was "more integration." The Court was unable to elicit any constructive suggestions from the attorney-intervenor, and it was obvious that the requested "more integration" was being sought solely for sociological reasons rather than for the purpose of improved educational opportunity for children. On the basis of these conferences, the Court would have been justified in simply denying the motion for "supplemental relief." However, out of an abundance of caution, and in an effort to obtain the opinion of experts completely detached from the East Baton Rouge Parish school system, the Court appointed the Louisiana Educational Laboratory (LEL) to act as a court-appointed expert to investigate the entire operation of the East Baton Rouge

Parish school system and to advise and assist the Court in determining what action, if any, was needed to bring the East Baton Rouge Parish school system into compliance with the prior desegregation orders of this Court and with present constitutional requirements. At a cost of $27,949.89, borne by the East Baton Rouge Parish School Board, the LEL made an intensive study of the entire school system and filed two comprehensive reports with the Court, a preliminary report dated December 23, 1974, and a final report dated May 1, 1975. These reports have been made a part of the record.

Following receipt of the first report, and after conferences with counsel, the Court issued an order dated February 26, 1975, whereby it ordered certain recommendations of the LEL implemented. These recommendations related to the appointment of blacks to the School Board staff at the decision making and planning levels; further implementation of majority to minority transfer provisions including provisions for furnishing transportation to transferees; re-constituting the Bi-Racial Committee; re-examination of distribution of teachers on basis of race and experience; and re-examination of attendance zones. Evidence since that time has shown that this order has been fully complied with.

Following receipt and distribution of the final report of May 1, 1975, an evidentiary hearing was held. At that hearing the only witnesses called by the "attorney-intervenor" were Dr. Lionel O. Pellegrin, the LEL staff member who authored the reports; Dr. John Moland, Jr., a teacher and researcher at Southern University; and Mr. Ed Steimel, of the Public Affairs Research

Council (PAR). No plaintiffs were called, and no complainants were presented in court.

The sum total of the evidence adduced from these witnesses was (1) students in the Baton Rouge school system are not being denied access to any public school because of race; (2) all students in the East Baton Rouge Parish school system are being offered equal and high quality education; and (3) further forced mixing of the races in the various schools would not in any way improve the quality of education being offered students in the East Baton Rouge Parish schools.

This, in essence, was the testimony offered by the "attorney-intervenor" in support of his request for "supplemental relief." All witnesses testified that as a general rule, assignment on the neighborhood school basis produces the best educational opportunity because it produces greater interplay between students, parents, and teachers, and it creates more stability in the school system. Dr. Moland stated that in his opinion, while the neighborhood concept does not always enhance desegregation because of the fact that white students tend to move out when the ratio of blacks to whites becomes too large, placing a few white students in a predominantly black school does not improve the educational quality of the school. He concluded that such a move is purely sociological and does not necessarily enhance the educational opportunity available to students. This was one of the plaintiff's witnesses. Mr. Ed Steimel, the only other witness called by the intervenor, based his testimony primarily on the recent report of Dr. James S. Coleman, the University of Chicago sociologist who originally supported the concept of massive bussing to achieve forced

racial balance in public schools. But he, in his most recent report, concludes that "You can't create integration by court edict" alone. Based largely on Dr. Coleman's report, Mr. Steimel concluded that it is far better from an educational standpoint to keep schools either all black, or with a majority of white students. He concluded that experience has shown that black students learn better when their school is all black than they do where there is only a token number of whites mixed in. This was the testimony of another one of plaintiff's witnesses. This observation, allegedly supported by Dr. Coleman's report, is important when considering the validity of attendance zones established by the School Board. The evidence in this case makes it abundantly clear that there is no forced segregation of the races in the East Baton Rouge Parish school system, and that every student has the opportunity to attend an integrated school, with transportation furnished, if he wishes to do so. Whatever segregation exists, as it does in a few all black and all white schools in the system, exists by deliberate choice and because of legitimate, voluntary neighborhood patterns. To force a few white students to attend a few all black schools, or to force a few black students to attend the two all white schools, solely for the purpose of being able to say that 100 per cent of the schools in the system have racially mixed student bodies would be the height of foolishness. If there was any credible evidence to suggest that the students involved in a presently all black or all white school would be afforded better educational opportunity by sending a few students of the opposite race there, a valid argument might be made for doing so. But experience,

as well as the evidence in this case, has shown the opposite to be true. It must be remembered that the true objective in this whole school integration turmoil was supposed to be to improve the quality of education available to all students. The objective was never intended to be to reduce educational opportunity to the lowest common denominator, nor to play a "constitutional numbers game" with a view to being able to merely say that certain pre-determined ratios of mixing have been achieved, across the board, in all schools, without regard to its effect on the quality of education being offered the students involved. It is imperative that we immediately turn away from the absurd course that some would have us follow whereby court decrees are sought and used in school desegregation cases for the sole purpose of bringing about some sought after sociological change rather than for the purpose of securing to all students, regardless of race, their constitutional right to equal educational opportunity.

The Federal Courts have demonstrated their ability and their determination to see that constitutional rights, as they pertain to equal educational opportunity for all students, are protected. This they should, of course, do. But the Courts should be equally determined to see that they are not used, or mis-used, for the purpose of bringing about purely sociological changes that do not fall within the limited jurisdiction granted to the Federal Courts by the Congress and by the Constitution.

Public Law 93-380, known as the Equal Educational Opportunities Act of 1974, became effective on August 21, 1974. Title II of this Act, (hereafter "the Act"), deals with the Equal Educational Opportunities of Students.

See 20 U.S.C.A. §1701-1720, 1751, 1752-1758. Section 202 of the Act re-establishes the policy that all children are entitled to equal educational opportunity, and that the neighborhood is the appropriate basis for public school assignment. Section 205 indicates that lack of balance on the basis of race is not necessarily a denial of equal educational opportunity. Section 206 states that assignment of students on a neighborhood basis is not a denial of equal educational opportunity unless such assignment is for the purpose of segregation or unless the school was purposely located on the site for the purpose of segregation. Such is not the case in the East Baton Rouge Parish system. Section 208 provides that once a school system is determined by the Court to be desegregated, or unitary, school population changes shall not per se constitute a cause for a new plan of desegregation. The evidence in this case shows conclusively that the East Baton Rouge Parish school system has been desegregated, and is a unitary system, and there is no evidence to justify the ordering of a new plan of desegregation. Section 213 calls for imposition of only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws. Neither the LEL, in its intensive and extensive investigation, nor this Court finds any evidence of denial of equal educational opportunity or equal protection of the laws in the East Baton Rouge Parish school system. The attorney-intervenor in this case would have the Court order massive bussing for the sole purpose of achieving a greater percentage of racial mixing in each school. The mere suggestion of this is preposterous and any such order would be clearly illegal. Section 214 of

the Act establishes a priority of remedies, if indeed remedies were found necessary. Included in these remedies is the assignment of students to the closest school, permitting majority to minority transfers, creation of attendance zones that will not require transportation, and establishment of magnet schools. All of these things are either being done, or are currently under study by the East Baton Rouge Parish school system. But further than this, the Act specifically provides that the provisions of Section 214 are subject to the provisions of Section 215 which specifically limits transportation of students to schools closest or next closest to the place of residence of the student. Then, to emphasize the intent of Congress, the Act, in Section 251 specifically states that the Act shall not be interpreted to require the use of transportation of students to overcome a racial imbalance. These are among the pertinent provisions of the Equal Educational Opportunities Act of 1974. While the Act provides in Section 203 (b) that the provisions of the Act are not intended to modify the authority of a court to fully enforce the Fifth and Fourteenth Amendments, this provision is no license for the Federal Courts to ignore or thwart the clear intent of Congress. The enumeration by Congress of the things that should not be done for the purpose of achieving some predetermined degree of racial mixing in schools is an unambiguous indication of the intent of Congress. The Courts should be bound by those proscriptions, and it should be only in cases where lack of integration in a particular school is the result of some positive act on the part of the state, the municipality, or the school authorities to further segregation that the reference to the Fifth and

Fourteenth Amendments in the Act becomes important. There is no evidence in this case of Fifth or Fourteenth Amendment violations.

The evidence and the record in this case show without question of doubt that the East Baton Rouge Parish school system is indeed a unitary, desegregated school system and that it is being operated in compliance with the Constitution and laws of the United States. It is being operated in complete accord with the Equal Educational Opportunities Act of 1974, supra, and there is not the slightest indication present of any violation of the prior orders of this Court.

The final report of the LEL contained several suggestions and recommendations pertaining to the future operation of the schools. While many of these suggestions obviously have merit and should be seriously considered by the School Board, they are, nevertheless, not changes that are required by law or by court order. Several of the recommended changes have been implemented, for which the School Board should be commended. They have added two black administrators at policy making level to the staff. The suggested extension of the majority to minority transfer provision has been widely publicized and implemented. Not only has transportation been provided for those requesting transfer, but transportation is provided for students who wish to take a look at another school in which he might be interested. Applications for transfer are being encouraged. A new Bi-Racial Committee has been organized and meets on a regular basis. This Committee has under active consideration such items as teacher assignment, attendance zones, consolidation of schools, and establishment of magnet schools. Many of the LEL recommendations, such as those pertaining to Staff Organization, Responsibility of the School Board, Staff Responsibility, etc., while undoubtedly having merit, are not matters over which this Court should exercise jurisdiction. However, as the evidence clearly shows, most of those recommendations have either been implemented or are under serious consideration by the School Board and by the Bi-Racial Committee. As to the specific recommendations made by LEL pertaining to attendance zone changes, the Court concludes that these recommended changes are not required in order to bring the system into compliance with either the law or prior orders of this Court. While some of the recommendations may have merit, the question of whether or not they are to be followed by the School Board is entirely a matter of school administration, and not a matter to be decided by the Court. Most, if not all, of the recommended changes in attendance zones would have only a minimal effect on the degree of integration of student bodies. None of the recommended changes are required either by law or by prior order of the Court, and there is no evidence to suggest that the recommended changes in attendance zones would substantially affect the quality of education being offered the students in the system. While good school administration would suggest a constant review of such things as transportation routes, school attendance zones, etc., this Court concludes that in view of the record in this case, no mandatory changes in attendance zones is indicated. This Court further finds, as a fact, that the East Baton Rouge Parish school system is a unitary system being operated on a non-discriminatory

basis, in accordance with the requirements of law and the prior orders of the Court.

This case has now been under the continuing jurisdiction of this Court for close to 20 years. The retention of such jurisdiction was mandated by the Supreme Court in *Brown v. Board of Education of Topeka, Kansas*, 75 S.Ct. 753, 756. The Court said that the District Courts should supervise the transition of school systems from segregated to unitary systems, and that "*During this period of transition* the Courts will retain jurisdiction of these cases." (Emphasis added.) This mandate, by clear implication, requires that at the end of the period of transition, or when the school system has been declared to be a unitary system, the jurisdiction of the Court over that particular case should come to an end. There is good reason for this as the present case clearly shows. The transition has been completed. There are no longer any plaintiffs in this suit. Retention of jurisdiction perpetuates an intolerable "motion practice" in these school cases which denies the school boards the fundamental right to be sued only by a plaintiff who must carry the burden of proving his case. This "motion practice" that has developed and has been perpetuated in these desegregation cases enables people, such as the attorney-intervenor in this case, to simply file a motion, obtain a show cause order, and this shift the burden of proof to the School Board. This procedure had its place during the early stages of the desegregation process. But after the school system has been declared to be a unitary system, operating in accordance with law and constitutional principles, the transition is complete even though further improvements may be made or future violations

may occur. After 20 years, this school system has been and is now declared to be a unitary system. The time has come to say that if future causes of action arise in connection with the administration of the East Baton Rouge Parish school system, the complainant must follow the long established principles of our law and file his suit as in any other civil proceeding, permit the defendant to answer the suit, and then proceed, if he can, to carry the burden of proving his case by a preponderance of the evidence. The dual standard that has been established in these school cases should be terminated as soon as the school board has been found to be operating the school system in accordance with law. The constant harassment of school boards by those who are permitted to engage in this unjustified "motion practice" is costly to the school system, costly to the people of the community, and detrimental to the operation of the schools. We must return to the long accepted principle that he who asserts the affirmative of an issue in a civil case must carry the burden of proving it by a preponderance of the evidence. The school board, after having been found to have converted its system to a unitary system, should no longer be presumed to be guilty and thus required to prove its innocence. The East Baton Rouge Parish school system is a unitary system, and there are simply no justiciable issues left in this particular case. If new causes of action arise, they must be the subject of new suits.

Therefore, for these reasons, the demands of the "plaintiff-intervenor" for "supplemental relief" will be denied, and this suit will be dismissed and closed. Judgment will be entered accordingly.

Baton Rouge, Louisiana, August 21, 1975.

/s/ E. GORDON WEST

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CLIFFORD EUGENE DAVIS, JR.,
A MINOR, BY HIS FATHER AND NEXT
FRIEND, CLIFFORD EUGENE
DAVIS, SR., ETC., ET AL

VERSUS — CIVIL ACTION NUMBER 1662

EAST BATON ROUGE PARISH SCHOOL
BOARD, a Corporation, and LLOYD
FUNCHESS, as Superintendent of Public
Schools in East Baton Rouge Parish

JUDGMENT

This matter came on for hearing on a former day on motion of plaintiff-intervenor for supplemental relief. After due consideration of the evidence heard and the record made in this case, for the written reasons this day assigned:

IT IS ORDERED that the motion of plaintiff-intervenor for supplemental relief be, and it is hereby DENIED, and this entire suit is now DISMISSED.

Baton Rouge, Louisiana, August 21, 1975.

/s/ E. GORDON WEST

UNITED STATES DISTRICT JUDGE

APPENDIX B

DAVIS v. EAST BATON ROUGE PARISH SCH. BD.

Clifford Eugene DAVIS, Jr., et al., Plaintiffs,

Dr. D'Orsay Bryant and Alphonso O. Potter,

Plaintiffs-Intervenors-Appellants,

v.

EAST BATON ROUGE PARISH
SCHOOL BOARD et al.,
Defendants-Appellees.

No. 75–3610.

United States Court of Appeals,
Fifth Circuit.

April 7, 1978.

Intervenors in school desegregation case filed motion for supplemental relief, seeking further integration of East Baton Rouge Parish school. The United States District Court for the Middle District of Louisiana 398 F.Supp. 1013, E. Gordon West, J., dismissed case with prejudice, and intervenors appealed. The Court of Appeals, Tjoflat, Circuit Judge, held that: (1) where district court failed to determine whether eradication of vestiges of past discrimination evidenced by one-race schools could be accomplished by remedial alternative desegregation methods, case would be remanded for such determination, and (2) where teacher reassignment plan, although facially neutral, led to placement of less experienced teachers in "black" schools and more experienced teachers in "white" schools, case would be remanded for making of specific findings concerning such plan, and (3) district court would be directed to consider and make

findings on other issues raised by intervenors' motion for supplemental relief.

Vacated and remanded with instructions.

Appeal from the United States District Court for the Middle District of Louisiana.

Before COLEMAN, TJOFLAT, and FAY, Circuit Judges.

TJOFLAT, Circuit Judge:

In the proceedings below, the district court found that the East Baton Rouge Parish school system is a unitary system being operated on a nondiscriminatory basis and dismissed this case with prejudice. The intervenors appeal from the district court's order; they claim that the school system is not and never has been unitary.[1]

Like so many school desegregation suits in this circuit, this case has been in the federal courts for many years. The suit was instituted in 1956, following the Supreme Court's decisions in *Brown v. Board of Education (Brown I)*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) and *Brown v. Board of Education (Brown II)*, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955). In the course of this protracted litigation, the district court has entered various injunctive orders, keeping pace with the evolving law in this area as espoused by the Supreme Court and this circuit.[2]

1. Dr. D'Orsay Bryant and Mr. Alphonso O. Potter were allowed to intervene as plaintiffs by the district court on December 19, 1969. Dr. Bryant, President of the Baton Rouge Chapter of the NAACP, and Mr. Potter, Regional Vice-President of the NAACP for the Sixth District, were both black citizens of the Parish and fathers of school-age children. In their motion to intervene, they alleged that the interests of local black children were not being properly and expeditiously represented. In 1974, the intervenors sought further integration of the East Baton Rouge Parish schools by filing a motion for supplemental relief. The district court's opinion denying this motion and dismissing the entire suit is reported at 398 F.Supp. 1013 (M.D.La.1975).

The East Baton Rouge Parish school system was last before this court in a consolidated case decided in 1967. *United States v. Jefferson County Board of Education*, 380 F.2d 385 (5th Cir. 1967) (en banc), *modifying*, 372 F.2d 836 (1966). This court remanded the case to the district court in 1967, with instructions that the district court enforce the affirmative duty of the

> boards and officials administering public schools . . . to bring about an integrated, unitary school system in which there are no Negro schools and no white schools—just schools. . . The necessity of overcoming the effects of the dual school system in this circuit requires integration of faculties, facilities, and activities, as well as students.

Id. at 389 (footnotes omitted). Following this court's remand, East Baton Rouge Parish operated a combined geographic zone and freedom-of-choice school assignment plan. *Davis v. East Baton Rouge Parish School Board*, 269 F.Supp. 60 (M.D.La.1967). Two years later,

2. In addition to the order of dismissal now on appeal, see note 1 *supra*, there have been three other reported decisions by the district court. These decisions can be found at 269 F.Supp. 60 (M.D.La.1967), 219 F.Supp. 876 (M.D.La.1963), and 214 F.Supp. 624 (M.D.La.1963).

this court held in *Hall v. St. Helena Parish School Board*, 417 F.2d 801 (5th Cir.), *cert. denied*, 396 U.S. 904, 90 S.Ct. 218, 24 L.Ed.2d 180 (1969), that a freedom of choice plan was unacceptable when it did not effectively desegregate the school system. Following the *Hall* decision, in 1970 the East Baton Rouge Parish School Board established a biracial committee, the Public Education Study Committee, which created two biracial subcommittees to consider separately the problems of student and faculty desegregation. The biracial committee formulated a proposed school desegregation plan that was unanimously approved by the school board and submitted to the district court, which adopted it on July 22, 1970. Second supp. record at 30. No appeal was taken.

The 1970 plan provided for desegregation of faculty, staff, transportation, extracurricular activities, student body composition, and school facilities. Student assignment was based primarily on the neighborhood school concept, under which children would attend the school closest to their place of residence. A majority-to-minority transfer provision was also incorporated into the plan, allowing a child attending a school in which the majority of students were of his race to transfer to a school in which he would be in the minority.

In 1974, the intervenors filed a motion for further relief. Drawn in general terms, the motion alleged that the 1970 plan was not desegregating the school system effectively. This contention was based primarily on two grounds. First, in East Baton Rouge Parish there still

exist many one-race or substantially one-race schools. Second, the present teacher reassignment plan, although desegregating the faculty, places less experienced teachers in the "black" schools, thereby allegedly lowering the quality of education.

On August 14, 1974, the district judge designated the Louisiana Educational Laboratory (LEL) as a court-appointed expert to assist the court in the case and directed LEL to file an interim report by January 1, 1975, indicating any immediate remedies that the court should impose. Based upon the recommendations made by LEL, the district court entered an interim order on February 26, 1975.[3] After the LEL filed its final report, the district court set a final hearing on the intervenors' motion for supplemental relief and challenge to the LEL study. This hearing was held on June 18, 1975. Four witnesses testified: the LEL officer who supervised the study, the school board superintendent, and two witnesses not directly involved in either the LEL study or the administration of the school system. At the conclu-

3. The district judge found that the school board had made "a good faith effort to comply with the prior orders of this Court, and to bring this school system into compliance with the Court's orders and with constitutional requirements." Record, vol. 1, at 110. Despite this finding, the judge ordered immediate school board action on several of the LEL recommendations: (1) the appointment of a second black to a high administrative position; (2) the provision of public transportation to complement the majority-to-minority transfer option; (3) the reorganization of the biracial committee, rendering it a court-appointed advisory body; and (4) the consideration of further planning in the areas of the magnet school concept, the restructuring of attendance zones, and the racial composition of the school board's central staff.

sion of the hearing, the district judge requested briefing from the parties.

On August 21, 1975, the district court handed down the order that is the basis of this appeal. 398 F.Supp. 1013 (M.D. La.1975). The district judge stated that the interim relief ordered in February had been fully complied with, that the biracial committee was in the process of studying further desegregation techniques (*e. g.*, alteration of attendance zones, reassignment of teachers, and clustering of schools), and that the school board had already done everything that the Constitution mandates in eliminating a dual school system. He declared the system to be unitary and held that under *Brown II*'s mandate that the federal courts retain jurisdiction over a school system pending its transition from a dual to a unitary system, the East Baton Rouge Parish school system was no longer appropriately within his jurisdiction. Accordingly, he dismissed the suit with prejudice.

I. Student Assignment

The main thrust of the intervenors' attack on East Baton Rouge Parish's school desegregation is the large number of substantially one-race schools. The record discloses that East Baton Rouge Parish School System serves both the city of Baton Rouge and the parish of East Baton Rouge. The parish contains 468.35 square miles, is irregularly shaped, and is approximately thirty miles from north to south and twenty miles from east to west. Along with the city of Baton Rouge, there are suburban and rural areas in the parish. There are ap-

proximately 70,000 students enrolled in the school system, of which some 36,000 are transported daily by provision of the school board. The racial mix is approximately sixty-five percent white, thirty-five percent black.

Of the approximately 110 schools in the system, twenty have student bodies comprised solely of black children. In addition, over half of the schools have student bodies that are ninety percent or more of one race, and over half of the black students attend schools that are substantially all black.

In its order dismissing the case, the court below commended the neighborhood school plan now utilized by the school board without determining whether further eradication of the vestiges of past discrimination, which are evidenced by the one-race schools, could be accomplished by means of the "desegregation tools" approved in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971). *See also, Green v. County School Board*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968); *United States v. Mississippi*, 567 F.2d 1276 (5th Cir. 1978).

There is a presumption under *Swann* against the maintenance of a school system with substantially one-race schools. The Supreme Court declared as follows:

> Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominately of one race, they have the burden of showing that such school assignments

> are genuinely nondiscriminatory. The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part.

402 U.S. at 26, 91 S.Ct. at 1281. In the absence of explicit and specific findings by the district court, we are unable to determine whether the school board has met its burden and whether these schools have been subjected to the close scrutiny that is required prior to declaring that a school system passes constitutional muster. We therefore vacate the district court's order dismissing the case and remand the case for further proceedings. *See, e. g., United States v. South Park Independent School District*, 566 F.2d 1221 (5th Cir. 1978).

[1, 2] At a minimum, the district court on remand must evaluate whether any of the essentially one-race schools would be eliminated by the remedial altering of attendance zones or the pairing and clustering of noncontiguous school zones. *See Swann*, 402 U.S. at 27–29 & n. 10, 91 S.Ct. at 1281–82; *Lemon v. Bossier Parish School Board*, 566 F.2d 985 (5th Cir. 1978); *Cisneros v. Corpus Christi Independent School District*. 467 F.2d 142, 152–54 (5th Cir. 1972) (en banc), *cert. denied*, 413 U.S. 922, 93 S.Ct. 3052, 37 L.Ed.2d 1044 (1973). These are only examples of the permissible tools that may be used to integrate a school system. The district court is directed to consider the possible alternatives to the neighborhood school concept and to make findings regarding the feasibility and efficacy of implementing one or a combination of these alternatives. As this court has

repeatedly stated, "The findings and conclusions we review must be expressed with sufficient particularity to allow us to determine rather than speculate that the law has been correctly applied." *Golf City, Inc. v. Wilson Sporting Goods Co.*, 555 F.2d 426, 433 (5th Cir. 1977) (quoting *Hydrospace-Challenger, Inc. v. Tracor/MAS, Inc.*, 520 F.2d 1030, 1034 (5th Cir. 1975)).

II

[3] The second point raised by the intervenors concerns the present teacher reassignment plan, implemented pursuant to *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir.), *ref'd in part on other grounds sub nom. Carter v. West Feliciana Parish School Board*, 396 U.S. 290, 90 S.Ct. 608, 24 L.Ed.2d 477 (1970). The plan was designed to remedy the disproportionate racial balance of teachers in the schools. Although facially neutral, the plan has led to the placement of inexperienced teachers in the "black" schools and more experienced, and therefore allegedly more qualified, teachers in the "white" schools. This occurred because transfers were made in reverse order of seniority; the teacher in a particular school with the most seniority, whether white or black, is the last teacher to be transferred to another school. Two of the factors contributing to this imbalance in experience are the larger number of white teachers and the longer duration of black teachers in the school system. These factors create a larger pool of relatively inexperienced white teachers so that when they are "traded" for black teachers, the school system places a disproportionate

number of relatively inexperienced teachers into the "black" schools.

We reserve any decision on the teacher reassignment scheme utilized by the East Baton Rouge Parish school board. As stated previously, the biracial committee has been studying the present plan. The district court on remand is directed to consider the plan in light of the dual purposes involved: desegregation must be effected, and quality education must be promoted. Specific findings must be made by the district court on this aspect of the desegregation of the school system so that we can properly review the issue. *See Golf City, Inc. v. Wilson Sporting Goods, Inc.*

III

[4] As part of its inquiry on remand, the district court is directed to consider and to make findings on the other issues raised by the intervenors' motion for supplemental relief. These issues concern alleged discrimination in new school construction and site selection, funding of schools, and use of the biracial committee.

The judgment dismissing the case is vacated. The case is remanded for further proceedings and specific findings in accordance with this opinion.

VACATED AND REMANDED WITH INSTRUCTIONS.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 75-3610

CLIFFORD EUGENE DAVIS, JR., ET AL.,
Plaintiffs

DR. D'ORSAY BRYANT AND ALPHONSO O. POTTER,
Plaintiffs-Intervenors-Appellants,

v.

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

ON PETITION FOR REHEARING

(May 25, 1978)

Before COLEMAN, TJOFLAT and FAY, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/s/ GERALD BARD TJOFLAT
UNITED STATES CIRCUIT JUDGE

CERTIFICATE

I hereby certify that a copy of the above and foregoing Appendix to Petition for Writ of Certiorari was mailed, postage prepaid, to Robert C. Williams, 1822 North Acadian Thruway, W., Baton Rouge, Louisiana 70802, and Murphy W. Bell, Post Office Box 319, Baton Rouge, Louisiana 70821.

Baton Rouge, Louisiana, this ´day of September, 1978.

JOHN F. WARD, JR.